

**BEFORE THE PHYSICAL THERAPY LICENSURE BOARD****STATE OF IDAHO**

In the Matter of the License of:	)	
	)	Case No. PHT-2009-1
MARK ANTHONY MAYNER,	)	
License No. PT-1629,	)	<b>STIPULATION AND</b>
	)	<b>CONSENT ORDER</b>
Respondent.	)	
_____	)	

WHEREAS, information has been received by the Idaho State Physical Therapy Licensure Board (the "Board") that constitutes sufficient grounds for the initiation of an administrative action against James Gordon Aiton ("Respondent"); and

WHEREAS, the parties mutually agree to settle the matter in an expeditious manner in lieu of administrative hearings before the Board; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**A. Stipulated Facts and Law**

A.1. The Board regulates the practice of physical therapy in the State of Idaho in accordance with title 54, chapter 22, Idaho Code.

A.2. The Board has issued License No. PT-1629 to Respondent. Respondent's license expired on October 23, 2008, and Respondent's license was canceled as of October 24, 2008. Respondent has not renewed his license; however, pursuant to Idaho Code § 67-2614, Respondent retains the right to renew his license for up to five (5) years after cancellation by paying the required fees.

A.3. On October 6, 2005, Respondent pled guilty to and was convicted of Petit Theft in State v. Mayner, Ada County District Court Case No. CR-MD-2005-0011754.

A.4. On or about June 9, 2006, Respondent submitted a Physical Therapist License Renewal Application Form and answered "no" to the question: "Since the date

of your last application for license renewal, have you: . . . Been charged with or convicted of a felony or misdemeanor other than minor traffic violations?” A redacted copy of Respondent’s June 9, 2006, Physical Therapist License Renewal Application Form is attached as Exhibit A. Since the date of his last application for license renewal in May 2004, Respondent had been convicted of a non-traffic misdemeanor.

A.5. On or about July 16, 2007, the State of Indiana Physical Therapy Committee (the “Committee”) entered a Findings of Fact, Conclusions of Law and Order against Respondent in Cause No. 2006-PTC-0005. In the Findings of Fact, the Committee found, among other things, that Respondent had been convicted of shoplifting in Idaho in 2005 and that Respondent practiced physical therapy in Indiana before the Committee issued his license. A copy of the Committee’s Findings of Fact, Conclusions of Law and Order in Cause No. 2006-PTC-0005 is attached as Exhibit A.

A.6. The allegations of Paragraphs A.3 through A.5, if proven, would violate the laws and rules governing the practice of physical therapy, specifically Idaho Code §§ 54-2219(9) (having disciplinary action taken by another state’s physical therapy licensure board) and 54-2219(13) (making misleading, deceptive, untrue or fraudulent representations in the application process). Violations of these laws constitute grounds for disciplinary action against Respondent’s license to practice physical therapy in the State of Idaho.

## **B. Waiver of Procedural Rights**

I, Mark Anthony Mayner, by affixing my signature hereto, acknowledge that:

B.1. I have read, understand and admit the allegations pending before the Board, as stated in Section A, Paragraphs A.3 through A.5. I further understand that these allegations constitute cause for disciplinary action upon my license to practice physical therapy in the State of Idaho.

B.2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses,

or to testify myself; the right to reconsideration of the Board's orders; the right to judicial review of the Board's orders; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of physical therapy in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this Stipulation as a resolution of the pending allegations.

B.3. I understand that in signing this Stipulation I am enabling the Board to impose disciplinary action upon my license without further process.

### **C. Stipulated Discipline**

C.1. Respondent's License No. PT-1629 is hereby INDEFINITELY SUSPENDED.

C.2. Before Respondent may apply to have his suspended license reinstated, Respondent must:

a. Pay to the Board an administrative fine in the amount of One Thousand and No/100 Dollars (\$1,000.00); and

b. Pay investigative costs and attorney fees in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00).

C.3. If Respondent applies to have his suspended license reinstated, then in addition to complying with all requirements for reinstatement that may be provided by law or rule, Respondent must also appear before the Board to discuss, to the Board's satisfaction, the underlying violations leading to this Stipulation and the scope and nature of the practice in which Respondent intends to engage.

C.3. If Respondent's suspended license is reinstated, the Board may impose any conditions, restrictions, and limitations on the Respondent's license and practice that the Board may determine, in its discretion, are necessary or appropriate to protect the public.

C.4. The violation of any of the terms of this Stipulation by Respondent may warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

#### **D. Presentation of Stipulation to Board**

D.1. The Board's prosecutor shall present this Stipulation to the Board with a recommendation for approval.

D.2. The Board may accept, modify with Respondent's approval, or reject this Stipulation. If the Board rejects the Stipulation, an administrative Complaint may be filed with the Board. Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the administrative Complaint based on the fact that the Board has considered and rejected this Stipulation. Respondent does not waive any other rights regarding challenges to Board members.

D.3. If the Board rejects this Stipulation then, except for Respondent's waiver set forth in Paragraph D.2., this Stipulation shall be regarded as null and void, and admissions in this Stipulation and negotiations preceding the signing of this Stipulation will not be admissible at any subsequent disciplinary hearing.

D.4. Except for Paragraph D.2. which becomes effective when Respondent signs this Stipulation, this Stipulation shall not become effective until it has been approved by a majority of the Board and a Board member signs the attached Order.

#### **E. Violation of Stipulation and Consent Order**

E.1. If Respondent violates this Stipulation and Consent Order, the violation shall be considered grounds for additional discipline and the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether Respondent has violated this Stipulation and Consent Order. The Chief shall also serve notice of the hearing and charges to Respondent and to Respondent's attorney, if any. Within twenty-one (21) days after the notice of the hearing and charges is served, Respondent may submit a response to the allegations. If Respondent does not submit a timely response to the Board, the alleged violations will be deemed admitted.

b. At the hearing, the Board and Respondent may submit evidence and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to evidence relevant to whether Respondent has violated this Stipulation and Consent Order. At the hearing the facts and substantive matters related to the violations described in Section A shall not be at issue.

c. At the hearing, the Board may impose additional discipline, which may include the suspension or revocation of Respondent's license, the imposition of fines, the recovery of costs and attorney fees incurred by the Board and/or other conditions or limitations upon Respondent's practice.

E.2. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

E.3. This Stipulation contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above Stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I am waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this Stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this Stipulation according to the aforementioned terms, and I hereby agree to the above Stipulation for settlement. I understand that if the Board approves this Stipulation subject to changes, and the changes are acceptable to me, the Stipulation will take effect and an order modifying the terms of the Stipulation will be issued. If the changes are unacceptable to me or the Board rejects this Stipulation, it will be of no effect.

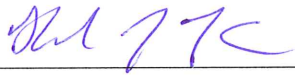
DATED this 13 day of Dec, 2008.

  
\_\_\_\_\_  
Mark Anthony Mayner  
Respondent

I recommend that the Board enter an Order based upon this Stipulation.

DATED this 8<sup>th</sup> day of January, 2009.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By   
Karl T. Klein  
Deputy Attorney General

### ORDER

Pursuant to Idaho Code § 54-2220, the foregoing is adopted as the decision of the Idaho State Physical Therapy Licensure Board in this matter and shall be effective on the 13<sup>th</sup> day of February 2009. IT IS SO ORDERED.

IDAHO STATE  
PHYSICAL THERAPY LICENSURE BOARD

By   
Stephanie A. Liddle, PT, AT, Chair

## CERTIFICATE OF SERVICE

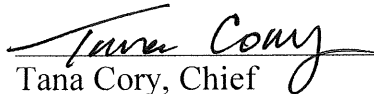
I HEREBY CERTIFY that on this 18<sup>th</sup> day of February, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Mark Anthony Mayner  
923 W. Lawrence Street  
Mishawaka, IN 46545

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Karl T. Klein  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ Statehouse Mail



Tana Cory, Chief  
Bureau of Occupational Licenses

STATE OF IDAHO  
BOARD OF MEDICINE

✓ #1008  
\$65-

PHYSICAL THERAPIST LICENSE RENEWAL APPLICATION FORM

LICENSE NO: PT-1629

Expiration Date: 06/30/2006

One Year Renewal Fee \$65.00

The Board of Medicine must receive your license renewal application and payment before the expiration date printed above or your license will be cancelled.

MARK ANTHONY MAYNER PT

5716

Renew online at [www.bom.state.id.us](http://www.bom.state.id.us) using the following PIN: 4840

OR

Complete and submit this form in its entirety according to the following instructions:

1. CHECK THE APPROPRIATE RESPONSE TO EACH QUESTION BELOW
2. READ AND SIGN THE AFFIDAVIT
3. ENTER YOUR SOCIAL SECURITY NUMBER
4. INCLUDE LICENSE NUMBER ON CHECK OR MONEY ORDER (NO CASH PAYMENTS)
5. SEND PAYMENT AND COMPLETED RENEWAL APPLICATION TO THE BOARD OF MEDICINE (ADDRESS AT TOP OF FORM)

RENEWAL QUESTIONS - Since the date of your last application for license renewal, have you:

- Y N
- A. ☐ ☒ Been refused a professional license/registration/permit?
- B. ☐ ☒ Been charged with or convicted of a felony or misdemeanor other than minor traffic violations?
- C. ☐ ☒ Been investigated by any licensing board, agency or professional association in connection with incompetency, practice act violations, unprofessional conduct or unethical conduct?
- D. ☐ ☒ Been subject to informal or formal proceedings by any licensing board, agency or professional association to revoke, suspend, restrict or limit a professional license/registration/permit?
- E. ☐ ☒ Had any serious physical or mental condition which in any way impairs or limits your ability to practice your medical profession with reasonable skill and safety?
- F. ☐ ☒ Had employment terminated, restricted, limitations imposed or resigned from employment to avoid formal action.
- G. ☐ ☒ Had problems with the use of alcohol, stimulants, habit forming and / or illegal drugs which in any way impairs or limits your ability to practice your medical profession with reasonable skill and safety?  
(Voluntary Professional Recovery Network participants may answer NO)
- H. ☒ ☐ Maintained a current IDACARE profile in accordance with Idaho Code Section 54-4601?

AFFIDAVIT: I hereby certify under penalty of perjury that my responses to the above are true and correct, and that I am lawfully entitled to renew the license noted above.

Mark Mayner  
Signature of Applicant

6-4-06  
Date

[REDACTED]  
Social Security #

06-09-06 10:02 6953  
K12



BEFORE THE INDIANA PHYSICAL  
THERAPY COMMITTEE  
CAUSE NO. 2006-PTC-0005

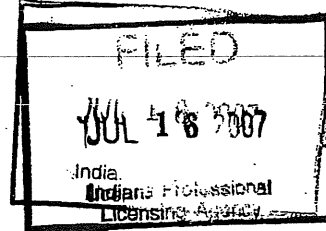
STATE OF INDIANA,

Petitioner,

v.

MARK ANTHONY MAYNER, P.T.,  
License Number: 05008964A,

Respondent.



**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The Indiana Physical Therapy Committee ("Committee") held an administrative hearing on June 27, 2007, in Room W064 of the Indiana Professional Licensing Agency of the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, concerning the Order to Show Cause issued against Mark Mayner ("Respondent") to determine if he was in compliance with the probationary terms imposed on his license.

Respondent appeared in person and was assisted by his sister, Stacy Gardner. He waived his right to be represented by legal counsel.

The Committee, after considering the evidence presented and taking official notice of its file in this matter, issues the following Findings of Fact, Conclusions of Law and Order:

**FINDINGS OF FACT**

1. Respondent, whose mailing address is 923 West Lawrence Street, Mishawaka, Indiana 46545, is a duly licensed physical therapist in the State of Indiana holding license number 05008964A.
2. The Indiana Professional Licensing Agency sent, and Respondent received, timely and proper notice of the date, time and location of this hearing pursuant to Indiana Code § 4-21.5-3-20.
3. The Committee is empowered to hold this administrative hearing pursuant to the authority of Indiana Code § 25-1-9 and Indiana Code § 4-21.5-3.

4. The Committee issued Respondent's license on probation in June 2006 because he had been convicted of shoplifting in Idaho in 2005.
5. Subsequent to issuing his license, the Committee became aware of the fact that the Respondent had been convicted of driving while intoxicated in California in 2001. He had not informed the Committee of that fact when he applied for his license. In addition, the Committee had reason to believe that the Respondent began to practice as a physical therapist in this state before he was issued a license.
6. At the hearing on the Order to Show Cause the Respondent admitted that he forgot to tell the Committee about the conviction in California. His answers to questions about other possible arrests were equivocal, but he maintained that he was nervous and promised to provide specific information when he makes his next probationary appearance.
7. He also admitted practicing before the Committee issued his license. The Respondent claimed that his employer at the time he moved to Indiana assured him that he could practice while his application for licensure was pending. Regardless of what the Respondent may or may not have been told, he realizes now that he should not have practiced without a license.
8. As a condition of probation the Respondent is obliged to follow the law regarding the practice of physical therapy. By not being forthcoming with the Committee about his driving conviction in California and practicing without a license he has violated the terms of his probation.

#### CONCLUSIONS OF LAW

1. When the Committee placed the Respondent on probation, it stated that, "[t]he failure of Applicant [Respondent] to comply with the terms of this order may subject him to a show cause hearing and the imposition of further sanctions."
2. As a further sanction, the Committee will modify the Respondent's probation.

#### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Committee MODIFIES the probation on Respondent's license as follows:

1. Respondent's license will remain on probation indefinitely and he may not apply to have the probation withdrawn until June 2008.

2. Respondent must take eight continuing education units in the field of law or ethics. Those units must be pre-approved by the Committee and he must obtain those units within six months of the date of this order.
3. Respondent must bring a complete list of all his arrests to his next personal appearance before the Committee.
4. Respondent's employer reports must include a statement that he is being directly supervised by an individual located in the same building where he is practicing.

All other terms and conditions on the Respondent's license remain in full force and effect although the Committee notes he has already read a copy of the APA code of ethics.

SO ORDERED this 17 of July, 2007.

INDIANA PHYSICAL THERAPY  
COMMITTEE

By: \_\_\_\_\_

*Frances L. Kelly*  
Frances L. Kelly  
Executive Director  
Indiana Professional Licensing Agency

Copy to:

Mark Anthony Mayner  
923 West Lawrence Street  
Mishawaka, Indiana 46545.

CERTIFIED MAIL NUMBER: 7003 3110 0004 5111 0924  
RETURN RECEIPT REQUESTED